(2014) 10 KL CK 0185

In the High Court Of Kerala

Case No : W.A No. 1505 of 2014

Commr. of Cus., Kochi — APPELLANT

Vs

International Frieght Systems Co. P. Ltd. — RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129A

Citation : (2014) 310 ELT 877

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : Saiby Jose Kidangoor, Advocate for the Appellant; P.A. Augustian, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard learned Standing Counsel for the appellants and learned counsel appearing for the respondent/writ petitioner. This writ Appeal has been filed against the interim order dated 23-9-2014 passed in W.P. (C) No. 20243 of 2014. Looking into the nature of the dispute raised between the parties, we admit the appeal and finalise the same.

2. The respondent/writ petitioner has filed the writ petition challenging two orders; first one (Ext. P2) passed by the Commissioner of Customs, Cochin dated 6-6-2014 by which the petitioner was prohibited to operate as Customs Broker within the jurisdiction of Cochin Customs and second one (Ext. P6), passed by the Commissioner of Customs (General), Mumbai dated 28-7-2014 suspending the petitioner''s Customs Broker license in exercise of the power under Regulation 19 of the Customs Brokers Licensing Regulations, 2013.

3. The learned Single Judge by the impugned order has modified Ext. P6 order limiting the suspension order against the writ petitioner from operating at Cochin terminal only. The learned Standing Counsel for the appellants challenging the

order of learned Single Judge submits that the suspension order was passed by the Commissioner of Customs (General), Mumbai in exercise of his power under Regulation 19 and there was no error in exercising such power which may warrant interference by this Court. He further submits that against Ext. P6 order the writ petitioner has a statutory remedy under Regulation 21 by filing an appeal under Section 129A of the Customs Act, 1962 before the Customs, Excise and Service Tax Appellate Tribunal. He submits that the learned Single Judge ought not have entertained the writ petition by passing the impugned order.

4. Challenging Ext. P6 order, learned counsel for the respondent/writ petitioner also submits that the order of suspension was passed basically on the reason that no review order is forthcoming from the office of the Customs of Cochin. He further submits that there is no irregularity or illegality with regard to the work done by the petitioner at any other place hence the learned Single Judge has rightly confined the operation of suspension order prohibiting the petitioner from working at Cochin only.

5. We have considered the submissions made by learned counsel for the parties and perused the records. Ext. P6 order dated 28-7-2014 had been passed under Regulation 19(2) of the Customs Broker Licensing Regulations, 2013 after giving opportunity of hearing to the petitioner. The said order is an order suspending the license of the petitioner after granting an opportunity of hearing. Respondent has no contention that the authority has no jurisdiction to pass the order or it has been passed in breach of the rules of natural justice. There being a statutory remedy available, we are of the view that this Court ought not have entertained the writ petition by passing the impugned order. It is well settled by the Apex Court that the exercise of writ jurisdiction can be made by this Court under Article 226 of the Constitution in cases where a statutory remedy is not provided. The Apex Court in this context has laid down in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, that when a statutory remedy is provided, the High Court shall not entertain a writ petition, except in cases where the order impugned is passed in violation of principles of natural justice in wholly without jurisdiction or when the vires of the Act is challenged. Thus, we are satisfied that the interim order passed by learned Single Judge cannot be upheld. Consequently, we set aside the interim order passed by learned Single Judge dated 23-9-2014. We, however, observe that the Commissioner of Customs, Mumbai may proceed to finalise the proceedings as early as possible. We make it clear that if the writ petitioner is so advised, he can avail the statutory remedy available. With the above observation the Writ Appeal is allowed.